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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 LOREAN BARRERA, On Behalf of
18 Herself and All Others Similarly
19 Situated and the General Public,

20 Plaintiff,

21 v.

22 PHARMAVITE LLC, a California
23 limited liability company,

24 Defendant.

Case No. 2:11-cv-04153-CAS (AGrx)

**PLAINTIFF'S REPLY IN SUPPORT
OF MOTION FOR POSTING OF AN
APPEAL BOND BY OBJECTOR
JUSTIN FERENCE**

Date: February 26, 2018

Time: 10:00 a.m.

Judge: The Hon. Christina A. Snyder
Courtroom: 8D

1 Aside from stating in a conclusory fashion that he “raised valid objections” to
 2 the Settlement (D.E. 441 (“Opp’n”), at 7), Objector Ference does not address that:
 3 (1) he presented boilerplate objections that were specifically considered and rejected
 4 by the Court (D.E. 440-1 (“Motion”), at 7-9); (2) he did not even attempt to limit his
 5 objections on appeal, despite at least one of them being mooted (*id.* at 1, 9); or that
 6 (3) his objections and appeal were made in bad faith as both he and Ms. Tucker are
 7 serial objectors who have displayed a pattern of unnecessarily delaying
 8 implementation of settlements to extract a financial pay-off (*id.* at 9-13). Similarly,
 9 while Objector Ference acknowledges that the *Azizian* factors determine whether an
 10 appeal bond applies, he inexplicably brushes them aside arguing that the factors
 11 “should not be considered,” and that if they were, the Court should simply take his
 12 word that they “would weigh against the imposition of a bond” as he makes no offer
 13 of support. (Opp’n at 4-5.) As discussed in Plaintiff’s Motion (D.E. 440-1 at 5-9),
 14 each of the *Azizian* factors weighs in favor of imposing an appeal bond here.

15 While Plaintiff agrees that “[t]he use of appeal bonds to chill the pursuit of
 16 legitimate, good-faith appeals is a practice that this Court should emphatically
 17 discourage” (Opp’n at 7), as set forth above and in Plaintiff’s Motion, neither
 18 Objector Ference’s objections nor his appeal are made in good faith. And, since the
 19 filing of Plaintiff’s Motion, the District Court of Massachusetts, Judge Denise J.
 20 Casper, imposed a bond on Objector Ference’s counsel, Ms. Tucker (who was acting
 21 as an objector this time), in the amount of \$311,175. *See Bacchi v. Mass. Mutual*
 22 *Life Ins. Co.*, No. 12-cv-11280-DJC, D.E. 326 (D. Mass. Jan. 25, 2018) (Docket
 23 attached hereto as Exhibit A; text entry only, no document attached). In ordering
 24 the appeal bond, the court noted that “[w]hether such bond is required and the
 25 amount of same is a matter best left to the sound discretion of the district court.” *Id.*

26 Thus, Plaintiff respectfully asks this Court to exercise its discretion here and
 27 order Objector Ference to post an appeal bond in the total amount of \$80,842.00.
 28 Because the basis for Plaintiff’s bond request is not attorneys’ fees or other damages

1 but instead the administrative costs set forth in Plaintiff's Motion as supported by
 2 the settlement administrator's Declaration (D.E. 440-3), Plaintiff's request is
 3 consistent with the prior rulings in the Ninth Circuit. *See Azizian v. Federated Dep't*
 4 *Stores, Inc.*, 499 F.3d 950, 958 (9th Cir. 2007) (appeal bond cannot include appellate
 5 attorneys' fees or damages and penalties but not addressing whether Rule 7 permits
 6 the inclusion of other administrative costs); *see also Family PAC v. Ferguson*, 745
 7 F.3d 1261, 1275 (9th Cir. 2014) (recognizing issue in *Azizian* was limited to whether
 8 Rule 7 includes attorneys' fees as recoverable "costs"). Post-*Azizian*, numerous
 9 courts within this Circuit have held that administrative costs caused by delay may
 10 be included in appellate bonds where properly supported.¹

11
 12 DATED: February 12, 2018

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 19 ¹ *See Redwen v. Sino Clean Energy, Inc.*, 2013 WL 12128684, at *2 (C.D. Cal Dec.
 20 20, 2013) (ordering bond including \$16,510.50 in additional administration costs
 21 "attributable to the delay caused by [objector's] appeal"); *In re Netflix Privacy Litig.*,
 22 2013 WL 6173772, at *4 (N.D. Cal. Nov. 25, 2013) (finding that including \$21,344
 23 in administrative costs was proper where "Plaintiffs [did] not seek a bond for delay
 24 damages or attorneys' fees, but rather for the administrative costs incurred during
 25 the delay of settlement"); *Dennings v. Clearwire Corp.*, 928 F. Supp. 2d 1270, 1272
 26 (W.D. Wash. 2013) (ordering appeal bond including \$39,150 to cover the "increased
 27 costs of administering the settlement as a result of the appeal"); *Miletak v. Allstate*
 28 *Ins. Co.*, 2012 WL 3686785, at *2 (N.D. Cal. Aug. 27, 2012) (declining to grant
 request for inclusion of "delay damages" to cover lost post-judgment interest, but
 awarding \$50,000 in "administrative costs" consisting of "the costs incurred in order
 to continue to service and respond to class members' needs pending the appeal")
 (internal quotations omitted); *Embry v. ACER Am. Corp.*, 2012 WL 2055030, at *2
 (N.D. Cal. June 5, 2012) (declining to grant request for "anticipated delay damages,"
 but imposing appeal bond of \$70,650, which encompassed both administrative and
 taxable costs) (internal quotations omitted); *see also Schulken v. Wash. Mut. Bank*,
 2013 WL 1345716, at *8 (N.D. Cal. Apr. 2, 2013) (declining to include delay
 expenses where appellees "could neither concretely identify the basis for their
 \$10,000 estimate, nor clearly distinguish the projected costs from those that could
 be claimed as attorney's fees").

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

I certify under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 12, 2018.

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